

Regular Session, 2009

HOUSE BILL NO. 33

BY REPRESENTATIVES LEGER, ABRAMSON, BALDONE, BARROW, BROSSETT, BURFORD, HENRY BURNS, DOVE, GISCLAIR, HARDY, HARRISON, HAZEL, HONEY, HOWARD, GIROD JACKSON, ROSALIND JONES, LIGI, LITTLE, LOPINTO, PETERSON, RICHMOND, ROY, SCHRODER, GARY SMITH, JANE SMITH, PATRICIA SMITH, ST. GERMAIN, STIAES, TEMPLET, THIBAUT, TUCKER, WHITE, AND WILLMOTT AND SENATORS HEITMEIER, JACKSON, MARIONNEAUX, AND MARTINY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(7), to enact Chapter 15 of Title 15 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 15:1601 through 1614, and R.S.
4 36:4(O), and to repeal R.S. 15:262, relative to witness protection; to enact the
5 Witness Protection Services Act; to provide for the development and administration
6 of the witness protection services program; to provide for definitions; to provide for
7 legislative findings; to create the Witness Protection Services Board within the office
8 of the governor; to provide for the membership of the board; to provide for the
9 powers and duties of the board; to authorize the receipt of per diem by certain
10 members of the board; to provide for the purposes of the program; to provide for the
11 components of the program; to provide procedures for obtaining witness protection
12 services; to provide for applicability; to provide for immunity from lawsuits resulting
13 from the delivery or failure to deliver witness protection services; to provide that no
14 right or cause of action is created by the provisions of this Act; to provide for
15 implementation; to provide public records exceptions; to provide exceptions to the
16 open meetings laws; and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. Chapter 15 of Title 15 of the Louisiana Revised Statutes of 1950,
19 comprised of R.S. 15:1601 through 1614, is hereby enacted to read as follows:

1 CHAPTER 15. WITNESS PROTECTION SERVICES

2 §1601. Short title

3 This Chapter shall be known as and may be cited as the "Witness Protection
4 Services Act".

5 §1602. Legislative findings

6 The legislature finds and declares that full and voluntary cooperation with
7 state and local law enforcement agencies by witnesses to crimes is imperative for the
8 general effectiveness of the criminal justice system and the protection of witnesses
9 is essential to obtaining that cooperation.

10 §1603. Definitions

11 For the purposes of this Chapter, the following words shall have the
12 following meanings:

13 (1) "Board" means the Witness Protection Services Board established in R.S.
14 15:1604.

15 (2) "Critical witness" means any witness who is reasonably expected to give
16 testimony that is, in the judgment of the prosecuting attorney, essential to a criminal
17 investigation or proceeding.

18 (3) "Immediate family" means a spouse, parent, child, stepchild, sibling,
19 grandparent, household member, or legal representative of a critical witness, except
20 when such person is in custody for an offense or is the defendant.

21 (4) "Prosecuting attorney" means the district attorney, assistant district
22 attorney, attorney general, or an attorney with prosecutorial authority for a local
23 governing authority.

24 (5) "Witness" means either of the following:

25 (a) Any person who is a victim of conduct defined as a crime under any law
26 of this state, another state, or the United States.

27 (b) Any person who has testified or is expected to testify for the prosecution
28 in a criminal proceeding, or who, by reason of having relevant information, is subject
29 to call or likely to be called as a witness for the prosecution in a criminal proceeding,
30 whether or not any action or proceeding has yet been commenced.

1 §1604. Witness Protection Services Board; composition; powers and duties

2 A.(1) The Louisiana Witness Protection Services Board, referred to in this
3 Chapter as the "board", is hereby created and established within the office of the
4 governor and shall provide for the supervision, administration, and delivery of
5 witness protection services. The board shall be a body corporate with the power to
6 sue and be sued.

7 (2) The board and its agents and employees shall be subject to the Code of
8 Governmental Ethics.

9 (3) Notwithstanding the provisions of R.S. 42:4.1 et seq., the board may
10 meet in private session to consider and take action on matters concerning the
11 awarding of protective services to, the identity of, or the location of a critical witness
12 or any immediate family member of a critical witness.

13 B. The board shall be domiciled in East Baton Rouge Parish and shall be
14 comprised of seven members as follows:

15 (1) The superintendent of the office of state police or his designee, who shall
16 be a law enforcement officer.

17 (2) The attorney general or his designee, who shall be an attorney employed
18 in the office of the attorney general.

19 (3) One member, who shall be a retired judge with criminal law experience,
20 appointed by the chief justice of the Supreme Court of Louisiana.

21 (4) One member of the Louisiana Senate appointed by the president of the
22 Louisiana Senate.

23 (5) One member of the House of Representatives appointed by the Speaker
24 of the House of Representatives.

25 (6) One member appointed by the governor from a list of three nominees
26 submitted by the Louisiana Sheriffs' Association.

27 (7) One member appointed by the governor from a list of three nominees
28 submitted by the Louisiana District Attorneys' Association.

29 C. Four members shall constitute a quorum, and all actions of the board shall
30 require the affirmative vote of at least four members.

1 D. The governor shall appoint the chairman of the board, and the board shall
2 annually elect such other officers from among its members as the board deems
3 appropriate.

4 E. The board shall meet at such times and places as may be fixed by the
5 board.

6 F. Notwithstanding R.S. 42:4.1 et seq., the board may conduct meetings
7 through telecommunication and teleconference.

8 G.(1) The board may employ an executive director and such other personnel
9 as it deems necessary in its administration of this Chapter.

10 (2) The board may appoint such committees or persons as it deems necessary
11 to advise or assist it in the administration of this Chapter.

12 (3) The board may incur all necessary and proper expenses.

13 (4) The board may adopt all rules necessary to implement the provisions of
14 this Chapter. All rules shall be adopted in accordance with the Administrative
15 Procedure Act.

16 H. The board shall establish procedures to maximize federal funds for
17 witness protection services.

18 I. The board shall oversee the state's witness protection services program and
19 coordinate the efforts of state and local law enforcement agencies to protect the
20 health, safety, and welfare of critical witnesses or immediate family members of
21 critical witnesses, including but not limited to the administration and approval of
22 funding for witness protection services.

23 J. The board shall have the right to employ outside legal counsel.

24 §1605. Board immunity

25 A. The board, its members, and its agents shall be immune from personal
26 liability for actions taken in good faith in the discharge of the board's responsibilities.

27 B. The state shall hold the board, its members, and its agents harmless from
28 all costs, damages, and attorney fees arising from claims and suits against them with
29 respect to matters to which immunity applies.

1 §1606. Protection services provided to critical witnesses; notice to defense counsel

2 A. Protection services provided to a critical witness or the immediate family
3 of a critical witness may include but not be limited to any of the following:

4 (1) Any necessary armed protection or escort, marked or unmarked
5 surveillance, or periodic visits or contact by law enforcement officials prior, during,
6 or subsequent to a criminal proceeding.

7 (2) Physical relocation to an alternate shelter, housing, or residence.

8 (3) Reasonable housing expenses.

9 (4) Transportation or storage of personal possessions.

10 (5) Basic living expenses.

11 (6) Assistance in assumption of a new identity and relocation.

12 (7) Petition for a protective order against any individual identified as a threat
13 to a critical witness.

14 B. Any protection services provided to a critical witness shall be made
15 known to defense counsel as provided by law.

16 §1607. Petition requesting witness protection services

17 A. In any criminal investigation or proceeding, the prosecuting attorney with
18 jurisdiction over the investigation or proceeding may file a petition with the board
19 requesting witness protection services for a critical witness if the prosecuting
20 attorney certifies that such witness's participation in the investigation or proceeding
21 places the witness at risk of harm, including but not limited to intimidation or
22 retaliatory violence. The identity of the witness shall not be provided to the board
23 and shall remain confidential.

24 B. The petition shall include a proposed plan for protection services which
25 shall include but not be limited to projected costs, method of protection, and likely
26 duration of services.

27 C. The board shall review the petition as soon as possible and if, by a vote
28 of four or more board members, it finds that the petition and plan comply with the
29 rules and regulations established by the board, the board shall assist the prosecuting

1 attorney in coordinating the efforts of state and local agencies to secure witness
2 protection services.

3 D. The board shall, subject to appropriation, reimburse the prosecuting
4 attorney for any witness protection related costs that comply with the regulations and
5 guidelines established by the board.

6 §1608. Temporary witness protection services; exigent circumstances

7 A. If a prosecuting attorney determines that exigent circumstances exist
8 regarding an imminent threat to the safety of a critical witness or the immediate
9 family of a critical witness, he may take any appropriate temporary action he
10 determines is necessary to protect the safety of the critical witness and his immediate
11 family without prior approval of the board.

12 B. The prosecuting attorney shall inform the board of the action taken and
13 the related costs within forty-eight hours. Any such costs, which would otherwise
14 be in compliance with the rules and regulations established by the board pursuant to
15 the provisions of this Chapter, may be reimbursed to the prosecuting attorney.

16 §1609. Written memorandum of understanding; persons required to sign; criteria

17 A. Before providing witness protection services to any critical witness or his
18 immediate family under this Chapter, except where it is determined that temporary
19 protection services are necessary pursuant to R.S. 15:1607, the prosecuting attorney
20 shall enter into a written memorandum of understanding with the critical witness and
21 any person in his immediate family who has attained the age of majority and who
22 will be receiving protective services.

23 B. If temporary protection services have been provided pursuant to R.S.
24 15:1607, the critical witness and any person in his immediate family who has
25 attained the age of majority and who is receiving protective services shall enter into
26 a written memorandum of understanding as soon as practicable.

27 (C)(1) The critical witness's written memorandum of understanding shall be
28 signed by the prosecuting attorney or his designee, the critical witness to be afforded
29 protection services, the tutor or legal guardian of the critical witness if the critical

1 witness is a minor, and the attorney representing the critical witness if the critical
2 witness is represented by counsel.

3 (2) Any immediate family member who has attained the age of majority and
4 who will be receiving protective services shall execute a written memorandum of
5 understanding in compliance with the provisions of this Section and such
6 memorandum shall be signed by the immediate family member and the prosecuting
7 attorney or his designee.

8 D. The written memorandum of understanding shall not be considered a
9 grant of immunity from criminal prosecution.

10 E. The written memorandum of understanding shall include the
11 responsibilities agreed to by the state in providing protection services and the
12 responsibilities agreed to by the critical witness or his immediate family in receiving
13 protection services.

14 F. The written memorandum of understanding shall provide that the
15 signatory party receiving protection services agrees as a condition of receiving those
16 services to:

17 (1) Provide complete and truthful information to all relevant law
18 enforcement officials related to all relevant investigations and to testify completely
19 and truthfully in all appropriate proceedings.

20 (2) Not commit any crime.

21 (3) Take all necessary precautions to avoid making known to others his
22 participation in the witness protection services program or the provision of protection
23 services under such program.

24 (4) Comply with any legal obligations or civil judgments.

25 (5) Cooperate with all reasonable requests of officers and employees of the
26 state who are providing protection services under this Chapter.

27 (6) Designate another person to act as an agent for the service of process.
28 Under no circumstances shall the person so designated be an employee of the
29 prosecuting attorney or other law enforcement agency or be a member of or perform
30 duties on behalf of the witness protection services board.

1 (7) Make a sworn statement of all outstanding legal obligations, including
2 obligations concerning child custody and visitation, and child support.

3 (8) Disclose any probation or parole conditions, obligations, or
4 responsibilities.

5 (9) Regularly inform the prosecuting attorney of his activities and current
6 address.

7 (10) Comply with such other specific conditions as are appropriate, stated
8 directly and without ambiguity, so as to be understandable to a reasonable man.

9 G. The written memorandum of understanding shall provide that the state
10 agrees to:

11 (1) Provide the names and telephone numbers of representatives of the
12 prosecuting attorney or law enforcement personnel to contact if the critical witness
13 or a member of his immediate family receiving protection services has questions or
14 concerns related to the protection services or to his safety.

15 (2) Provide the protection services that the prosecuting attorney has
16 requested if approved by the board in accordance with this Chapter.

17 (3) Provide the procedures to be followed, if there is a determination by the
18 prosecuting attorney that there has occurred a material breach of the memorandum
19 of understanding, as established by the prosecuting attorney.

20 §1610. Refusal of protection services; revocation of services upon violation of
21 memorandum of understanding

22 A. If a critical witness or any immediate family member thereof, after being
23 offered protection services under this Chapter, at any time declines to receive such
24 services, the prosecuting attorney shall request that the critical witness or such
25 immediate family member thereof make such refusal in writing, or, if the critical
26 witness or immediate family member refuses to document such refusal of services
27 in writing, the prosecuting attorney shall document the refusal and inform the
28 witness protection services board forthwith that the critical witness or immediate
29 family member has declined protection services.

1 B. If a critical witness or immediate family member receiving protection
2 services violates the terms of the memorandum of understanding set forth in R.S.
3 15:1609 or any other condition of receiving witness protection services under this
4 Chapter, the prosecuting attorney may revoke and terminate all protection services.
5 Upon such revocation and termination of protection services the prosecuting attorney
6 shall notify the critical witness and his immediate family members in writing of the
7 termination of protection.

8 C. The prosecuting attorney shall notify the board immediately of such
9 revocation and grounds therefore.

10 §1611. Relocation of critical witness to a public school

11 Notwithstanding any other provision of law to the contrary, if a petition and
12 plan for witness protection, approved by the witness protection services board,
13 requires relocation of a critical witness or immediate family member receiving
14 protection services to a public school within or without the critical witness's or
15 immediate family member's current school system, such relocation shall be
16 effectuated without regard to any impediment, including but not limited to class
17 capacity limits and attendance zones of any given school district.

18 §1612. Right of action not created; immunity

19 A. It is not the intent of the legislature to create any new right, right of
20 action, or cause of action or eliminate any right, right of action, or cause of action
21 existing under current law. Nothing in the provisions of this Chapter shall create,
22 expressly or by implication, any right, claim, or cause of action in favor of anyone
23 in connection with the provisions of witness protection services.

24 B. The state, any political subdivision of the state, or any officer or employee
25 of the state or political subdivision shall not be subject to any civil liability as a result
26 of any decision to provide or not to provide protection under this Chapter and shall
27 be entitled to absolute immunity for any action or inaction in providing or failing to
28 provide witness protection.

1 §1613. Liaison with United States Marshal's Office; pursuit of federal resources and
2 funding

3 A. The board shall establish a liaison with the United States Marshal's Office
4 in order to facilitate the legal processes over which the federal government has sole
5 authority. The liaison shall coordinate all requests for federal assistance relating to
6 witness protection.

7 B. The board shall pursue all federal sources that may be available for
8 implementing this Chapter. For that purpose, the board shall establish a liaison with
9 the United States Department of Justice.

10 §1614. Confidentiality of records

11 A. Any information relating to any witness participating in any program
12 established pursuant to the provisions of this Chapter shall remain confidential and
13 shall not be subject to disclosure pursuant to the Louisiana Code of Criminal
14 Procedure, the Public Records Act as provided under R.S. 44:1 et seq., or any other
15 provision of state law.

16 B. Information related to the appropriation, allocation, or expenditure of
17 monies on the program that does not include any information relating to any witness
18 shall be public and not subject to Subsection A of this Section.

19 Section 2. R.S. 36:4(O) is hereby enacted to read as follows:

20 §4. Structure of executive branch of state government

21 * * *

22 O. The Witness Protection Services Board (R.S. 15:1601 et seq.) shall be
23 placed within the office of the governor and shall perform and exercise its powers,
24 duties, functions, and responsibilities as provided by law.

25 * * *

26 Section 3. R.S. 44:4.1(B)(7) is hereby amended and reenacted to read as follows:

27 §4.1. Exceptions

28 * * *

29 B. The legislature further recognizes that there exist exceptions, exemptions,
30 and limitations to the laws pertaining to public records throughout the revised

1 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
2 limitations are hereby continued in effect by incorporation into this Chapter by
3 citation:

4 * * *

5 (7) R.S. 15:242, 440.6, 477.2, 549, 570(F), 574.12, 578.1, 616, 660, 840.1,
6 1176, 1204.1, 1614

7 * * *

8 Section 4. R.S. 15:262 is hereby repealed in its entirety.

9 Section 5. The provisions of this Act shall be implemented to the extent that funds
10 have been appropriated by the legislature or made available through grants or federal funds.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____